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SUPPLEMENTARY PROTOCOL TO THE TAX CONVENTION WITH THE TUNISIAN REPUBLIC

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE SUPPLEMENTARY PROTOCOL TO THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE TUNISIAN REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT TUNIS ON OCTOBER 4, 1989

JANUARY 25, 1990.—Protocol was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *January 24, 1990.*

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification the Supplementary Protocol to the Convention between the Government of the United States of America and the Government of the Tunisian Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at Tunis on October 4, 1989. I also transmit, for the information of the Senate, the report of the Secretary of State.

The supplementary protocol amends the income tax convention with Tunisia that was signed on June 17, 1985, and transmitted to the Senate on March 13, 1986. The subsequent enactment of the Tax Reform Act of 1986 occurred before the Senate could consider the convention. The supplementary protocol amends the convention by incorporating changes in U.S. law enacted in the Tax Reform Act of 1986. Of particular importance are the provisions authorizing imposition of the new U.S. branch tax and limiting the benefits of the convention to residents of the two Contracting States by preventing their diversion to residents of third countries.

I recommend the Senate give early and favorable consideration to the convention and supplementary protocol and give its advice and consent to ratification.

GEORGE BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, November 3, 1989.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Supplementary Protocol to the Convention between the Government of the United States of America and the Government of the Tunisian Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Tunis on October 4, 1989.

The Supplementary Protocol amends the income tax convention with Tunisia which was signed on June 17, 1985 and transmitted to the Senate for advice and consent to ratification on March 13, 1986. The subsequent enactment of the Tax Reform Act of 1986 occurred before the Senate could consider the Convention. The Supplementary Protocol principally reflects changes in United States law enacted in the Tax Reform Act of 1986.

The Protocol revises the provision of the Convention which authorized the imposition of a branch profits tax by Tunisia by also permitting the imposition of the United States branch taxes imposed by the 1986 Tax Reform Act.

It also introduces specific rules to ensure that the benefits granted by each State under the Convention to residents of the other are not diverted to residents of third states.

In addition, the Protocol modifies the taxation of royalties by the source country. Whereas the Convention allowed a tax at source of not more than 15 percent, the Protocol amends that article to introduce a reduced rate of 10 percent on equipment rentals and payments for technical studies and technical assistance. The scope of the permissible taxation at source of payments for such studies and technical assistance is also narrowed somewhat, to conform more closely to the precedent of the United States-Morocco income tax convention.

The Protocol further includes rules concerning the taxation of dividends paid by certain investment companies not subject to corporate income tax, rules concerning deferred payments of amounts attributable to a former permanent establishment, and a clarification of the residence status of United States citizens and permanent immigrants residing in third countries.

A technical memorandum explaining in detail the provisions of the Supplementary Protocol is being prepared by the Department

of the Treasury and will be submitted to the Senate Committee on Foreign Relations.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of the Supplementary Protocol. It has the full approval of both Departments.

Respectfully submitted,

LAWRENCE EAGLEBURGER,
Acting Secretary.

SUPPLEMENTARY PROTOCOL TO THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE TUNISIAN REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United States of America and the Government of the Tunisian Republic, desiring to amend the Convention between the Government of the United States of America and the Government of the Tunisian Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed on June 17, 1985, have agreed upon the following provisions:

ARTICLE I

Article 2 is amended as follows:

In paragraph 2(a) the reference to "the Internal Revenue Code" is changed to "the Internal Revenue Code of 1986";

Paragraph 2(b) is amended by changing the reference to "the business profits tax" to:

"the tax on industrial and commercial profits and the tax on corporations;"

ARTICLE II

Article 4, paragraph 1, is amended to read as follows:

"1. For purposes of this Convention, the term "resident of a Contracting State" means a Contracting State or a political subdivision or local authority thereof, and any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature. Tunisia shall treat a United States citizen or alien admitted to the United States for permanent residence (a "green card" holder) as a resident of the United States only if the individual has a substantial presence, permanent residence or habitual abode in the United States."

ARTICLE III

It is understood that, for the implementation of Articles 7 (Business Profits), 10 (Dividends), 11 (Interest), 12 (Royalties), 13 (Capital Gains), 14 (Independent Personal Services) and 21 (Other Income), profits and income attributable to a permanent establishment or fixed base during its existence is taxable in the Contracting State in which such permanent establishment or fixed base is situated even if the payments are deferred until such permanent establishment or fixed base has ceased to exist, in accordance with the domestic laws of the Contracting States.

ARTICLE IV

Article 10 (Dividends) is amended as follows:

A new paragraph (3) is added, as follows:

"3. Subparagraph (a) of paragraph 2 shall not apply in the case of dividends paid by a United States Regulated Investment Company or Real Estate Investment Trust. In the case of dividends paid by a Regulated Investment Company, subparagraph (b) of paragraph 2 shall apply. In the case of dividends paid by a Real Estate Investment Trust, subparagraph (b) of paragraph 2 shall apply if the beneficial owner is an individual holding a less than 25 percent interest in the Real Estate Investment Trust; otherwise the rate of withholding applicable under domestic law shall apply."

Paragraph 3 is renumbered 4 and the following sentence is added at the end of the paragraph:

"The term "dividends" also includes income from any income producing financial transactions, including debt obligations, carrying the right to participate in profits, to the extent so characterized under the law of the Contracting State in which the income arises."

Paragraph 4 is renumbered 5;

Paragraph 5 is renumbered 6 and is amended as follows:

At the end of subparagraph (a), add the word "or";

In subparagraph (b), the comma after the word "State" is changed to a period, and the final word "or" is deleted;

Subparagraph (c) is deleted; and

The flush language at the end of the paragraph is deleted.

Paragraph 6 is deleted and replaced by the following:

"7. Where a company which is a resident of a Contracting State derives profits which are attributable to a permanent establishment in the other Contracting State or income which is subject to tax in that other State under Article 6 (Income From Real Property) or paragraph 1 of Article 13 (Capital Gains), that other State may impose an additional tax on such profits or income, after deducting the income taxes imposed thereon in that other State other than the additional tax referred to in this paragraph, and on excess interest payments allocable to the permanent establishment or to amounts subject to tax under Article 6 (Income From Real Property) or Article 13 (Capital Gains), in accordance with the law of that other State, but the additional tax so charged shall not exceed 14 percent."

Paragraph 7 is deleted.

ARTICLE V

Article 11 (Interest) is amended as follows:

In paragraph 4, the phrase ", subject to the provisions of paragraph 4 of Article 10 (Dividends)," is inserted between "and" and "whether or not carrying a right to participate in the debtor's profits".

ARTICLE VI

Article 12 (Royalties) is amended as follows:

In paragraph 2, the final clause is amended to read as follows:

"the tax so charged shall not exceed 15 percent of the gross amount of the royalties described in subparagraph (a), (b) and (c) of paragraph 3 and 10 percent of the royalties described in subparagraph (d) of paragraph 3."

Subparagraphs (b) through (d) of paragraph 3 are amended to read as follows:

"(b) payments of any kind received as a consideration for the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial, or scientific experience;

"(c) gains derived from the alienation of any right or property described in subparagraphs (a) or (b) which are contingent on the productivity, use, or disposition thereof; and

"(d) payments for the use of, or the right to use, industrial, commercial, or scientific equipment (other than payments for the use of ships, aircraft, or containers used in international traffic, which shall be taxable only in the State of residence or under Article 7 (Business Profits), Article 8 (Shipping and Air Transport) or Article 14 (Independent Personal Services)), payments of any kind received by a resident of a Contracting State as remuneration for technical or economic studies, wherever prepared, which are paid out of public funds of the other Contracting State or a political subdivision or local authority thereof, or remuneration for the performance of accessory technical assistance for the use of property or rights described in this paragraph to the extent that such assistance is performed in the Contracting State where the payment for the property or right has its source."

In paragraph 6 the reference to paragraph 2 is changed to paragraph 3, the reference to paragraph 3(c) is changed to paragraph 3(d), and the final phrase, "or a resident thereof" is deleted.

ARTICLE VII

Paragraph 3 of Article 24 (Non-discrimination) is amended by inserting at the beginning of the paragraph, "Except as provided in paragraph 7 of Article 10 (Dividends)."

ARTICLE VIII

Article 25 (Mutual Agreement Procedure) is amended as follows:

Paragraph 4 is deleted;

Paragraph 5 is renumbered 4; and

Paragraphs 5, 6 and 7 are added as follows:

"5. A person (other than an individual) which is a resident of a Contracting State and derives income from the other Contracting State shall be entitled to the benefits provided for by this Convention in that other State only if such person satisfies the requirements of subparagraph (a) or (b) or (c) as follows:

"(a)(i) more than 50 percent of the beneficial interest in such person (or, in the case of a company, more than 50 percent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by one or more individual residents of one of the Contracting States,

one of the Contracting States or its political subdivisions or local authorities, or citizens of the United States; and

"(ii) the income of such person is not used in substantial part, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons who are not residents of one of the Contracting States, one of the Contracting States or its political subdivisions or local authorities, or citizens of the United States;

"(b) the income derived from the other Contracting State is derived in connection with, or is incidental to, the active conduct by such person of a trade or business in that State (other than the business of making or managing investments, unless these activities are carried on by a bank or insurance company);

"(c) the person deriving the income is a company which is a resident of a Contracting State in whose principal class of shares there is substantial and regular trading on a recognized stock exchange. For purposes of the preceding sentence, the term "recognized stock exchange" means:

"(i) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for purposes of the Securities Exchange Act of 1934;

"(ii) the Tunisian stock exchange (Bourse de Valeurs Mobilieres); and

"(iii) any other stock exchange designated by the competent authorities of the Contracting States.

"6. Before a resident of a Contracting State is denied relief from taxation in the other Contracting State by reason of paragraph 5, the competent authorities of the Contracting States shall consult with each other.

"7. A person that is not entitled to the benefits of this Convention pursuant to the provisions of paragraph 5 may, nevertheless, be granted the benefits of the Convention if the competent authority of the State in which the income in question arises so determines."

ARTICLE IX

This Protocol shall remain in force as long as the Convention of June 17, 1985 shall remain in force.

Done at Tunis, in duplicate, in the English and French languages, the two texts having equal authenticity, this fourth day of October , 1989.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE TUNISIAN REPUBLIC:

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